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4. ENSURING EFFECTIVE EDUCATION IN ALTERNATIVE CLINICAL MODELS

By Deborah Maranville¹

a. Introduction

BEST PRACTICES FOR LEGAL EDUCATION² organized its discussion of experiential courses around the “simulation-based courses, in-house clinics, and externships” typology without specifically defining what structures fall within each category or discussing the variations. The discussion of in-house clinics focused on fundamental principles for effective teaching and supervision and the need for appropriate facilities and office support. It only implicitly addressed the range of issues presented by alternative structures for clinics and did not address alternative externship structures or variations that combine features of both.

b. The Fundamental Best Practices for Experiential Course Variations

Experiential offerings can vary as to important structural characteristics. The decisions a law school makes on what arrangement to use as to any one characteristic will affect others, as well as the overall quality of the experience. Law schools have adopted many of the possible structural variations and experienced clinicians have an intuitive understanding of the strengths and challenges different variations present, although only limited assistance is available from scholarly and practical investigations of these questions.³ Without an understanding of which dimensions matter and how they interact, legal educators can too easily lose sight of the big picture.

Two fundamental best practices for evaluating how to structure experiential offerings that do not fit the well-established in-house clinic or externship model can be identified. These are to ensure that, first, students learn enough to justify the tuition the students pay and, second, the law school contributes enough to justify the law school receiving the tuition paid by the student.

The following discussion builds on Tables 1-5 and the accompanying discussion in the experiential subsection,⁴ and the more extended discussion in the sections on

¹ Readers for this section were Susan Brooks, Russell Engler, Katherine Kruse, and Mary Helen McNeal.

² ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP, Chapter 5, text at notes 537-621 (2007) [hereinafter BEST PRACTICES].

³ For more detail on design factors for experiential courses, see Deborah Maranville, Mary Lynch, Susan Kay, Phyllis Goldfarb, & Russell Engler, *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517 (2011-2012) [hereinafter Maranville, et al., *Re-vision Quest*].

⁴ Chapter 5, Section F, Subsection 1, *Incorporating Experiential Education throughout the Curriculum*, above. Many of these criteria are also found in the ABA Accreditation Standards. In order to satisfy Standard 303(a)(3)'s requirement that each student complete six credit hours of experiential courses, law schools are required to offer “primarily experiential” simulation, law clinic, or externship courses that exhibit four characteristics: “[i]ntegrate doctrine, theory, skills, and legal ethics, and engage students in

in-house clinics and externships.⁵ Those sections identify the educational value-added contributed to raw experience by well-designed in-house clinics and externships. In evaluating whether a real-practice experiential offering provides a serious, value-added experiential education opportunity, it is helpful to identify what role different structural characteristics play in contributing to the educational value of in-house clinics and externships described in the previous sections and to consider the likely effects of variations from the traditional designs.

c. Key Structural Characteristics of Real Practice Experiential Offerings

Clinical legal education has always offered a wider range of models for real practice experiential courses than is suggested by the “in-house clinics and externships” typology,⁶ and by the best-practices prototypical versions of those experiential models described in the preceding sections. Experiential opportunities that vary from the models described in the previous sections typically vary on one or more of three important dimensions: Who is the teacher? What is the driving rationale behind the offering (typically a trade-off between educational and service focus)? And how do the law school and any external partners support the educational aspects of the offering? A fourth dimension — where the offering takes place — is ordinarily not significant for educational quality, except to the extent that it implies differences regarding the first three dimensions. Location may have independent educational significance in two situations: (1) if the offering is so distant from the law school that it affects students’ other educational activities because students must spend hours commuting to and from the place where the experiential offering operates, or (2) with “semester-in-practice” offerings at remote, often international, locations where effective faculty oversight is challenging.

Who: The Teacher/Supervisor. One significant way in which real-practice experiential offerings often vary is in who teaches the students and who supervises their legal work. These are important questions, because who the teacher or supervisor is may affect the quality of the students’ experience in two ways: How much expertise and skill does the teacher/supervisor have in clinical teaching methodology and supervision? How much time does the teacher/supervisor have to devote to the students?

Expertise and skill will often, though not always, accompany greater specialization: full-time, professional teachers will often have more time and oppor-

performance of [identified] professional skills, . . . (ii) develop the concepts underlying the professional skills, . . . (iii) provide multiple opportunities for performance and (iv) provide opportunities for self-evaluation.”

⁵ Chapter 5, Section F, Subsection 2, *Delivering Effective Education in In-House Clinics* and Subsection 3, *Delivering Effective Education in Externship Programs*, above.

⁶ See Working Grp. on Vocabulary, Alliance for Experiential Learning in Law, *A Glossary for Experiential Education in Law Schools*, in *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. (forthcoming 2015); Cynthia F. Adcock, et. al., *A Glossary for Experiential Education in Law Schools*, available at <http://ssrn.com/abstract=2532208>, archived at <http://perma.cc/CZ29-69DR>.

tunity to develop a familiarity with clinical teaching methodology than part-time faculty, attorneys employed by outside agencies, or volunteers. But this factor, of course, depends on the interests, temperament, and institutional support available to the individual, and whether he has the opportunity to teach an offering over a long enough period of time and to otherwise develop his expertise.

Time available to devote to teaching and supervision depends on what other professional obligations make demands on the individual's time. These may be other courses or administrative duties for a member of the faculty, work obligations owed to a non-law school employer or clients for a part-time faculty member or external supervisor. Typically, a practitioner will have less time to devote to teaching or supervising the experiential offering than a full-time faculty member. But this may not be true if the full-time teacher has very heavy teaching, administrative, or service obligations, or if a teacher not primarily employed by the law school is teaching full-time for the duration of the offering. She may teach the offering regularly, or not. He may be paid a salary — either significant or nominal.⁷ She may have a significant workload in addition to teaching the offering, or not. Each of these characteristics affects both how much time the teacher can devote to the immediate teaching enterprise — planning the course and supervising students — and how much time, interest, and incentive the teacher has for learning about and developing expertise in clinical or externship pedagogy.

Time and expertise may present trade-offs that depend on the situation. For instance, a more junior teacher/supervisor might have fewer obligations, as well as a freshness and a connection to students that come from closeness in age that make up for less expertise. Or that junior teacher may be on a unitary tenure track with demanding writing obligations that limit time available for supervision. A teacher hired in a national search may be well steeped in clinical pedagogy, but have to adjust to practice in a new jurisdiction and local practice norms, or the reverse. An expert senior teacher/supervisor may be distracted by multiple obligations or have arrived at a stage in life where he is happily returning to a primary focus on teaching after having achieved recognition and success in other arenas.

What: A Primary Focus on Education or Providing Legal Service. A second important way in which real-practice experiential offerings vary is whether they are driven primarily by a focus on education or an effort to deliver legal services, typically to address an important access to justice gap. This is often a function of funding. Offerings funded internally by the law school will typically be focused primarily on educating the students, with service an important, but secondary concern. Likewise, experiential offerings funded with external grant funding are typically driven by service concerns

⁷ On occasion, law schools use supervisors who might be termed “volunteers,” most often retired attorneys.

and the funder may well demand that the offering take on a significant volume of cases, thus necessarily taking the focus at least somewhat away from student education.

How: Contributions by the Law School or Community Partner. In addition to funding in-house clinics internally, a law school can partner with an external organization to create a clinical offering. The contributions of either the law school or any community partner to an experiential offering can vary significantly both financially and in non-monetary ways.

A central question is whether personnel from the community partner or the law school is a part of the attorney-client relationship and has the responsibility for handling the cases when the clinic is not in operation and students are not available. If law school personnel undertake case coverage responsibilities when the clinic is not in session, the law school must staff and operate a law office removing one of the potential advantages of a collaboration.

Community partners typically provide the supply of cases and they often provide space and office supplies, or allow their attorneys to teach or supervise students. The extent of their potential contribution is often limited by budgetary and workload factors. Some potential community partners operate on sufficiently limited budgets that they are not able to make significant uncompensated contributions to students' experiential education where they will not receive equivalent benefits in the form of useful work product. Yet law students typically cannot produce work product that outweighs the value of the time spent in supervision until they receive a significant amount of training. Although many attorneys enjoy supervising student legal work and teaching in the classroom, their workload may make spending significant time on these tasks challenging. On the other hand, some organizations have extra space they are happy to offer for use by the supervisor and students in an experiential offering.

The law school can make direct financial contributions to a partner organization to cover overhead costs for space and supplies or buy out the external supervisor's time. The school can fund attendance by personnel from the community organizations at national or regional conferences for clinical teachers. Or the law school can make in-kind contributions by providing space or self-insurance for malpractice. Alternatively, the law school can contribute indirectly by providing expertise to help launch or oversee an experiential opportunity. For instance, teaching clinical pedagogy to personnel from partner organizations can be an accepted aspect of the job description of a full-time clinical teacher/clinic director.

Occasionally a community partner may contribute significant supervisory time, perhaps by offering select employees the opportunity to work with students in an experiential partnership as a break from the ordinary caseload. In that circumstance, the provider may be willing to absorb the cost of their employee's salary without a buy-out from the law school, viewing it as a perk to offer to a valued employee. Typically, however, that means that the

individual teaches for a limited time period, with minimal opportunity to develop expertise around clinical teaching.

An extraordinarily gifted and devoted external supervisor — especially one with training in clinical pedagogy, or experience teaching in other contexts — can sometimes create a high-quality experiential offering, even in the absence of significant support from the law school or the external organization. But for the individual — and their organization — this involves a big investment of time on top of what is ordinarily already an intense workload. Thus, it is typically difficult both to sustain such offerings and to maintain their quality, absent a fair financial contribution by the law school.

d. Common Structural Variations for Real Practice Experiential Offerings

By varying the three structural factors identified above — teacher; educational, or service focus; and law school or community partner contributions — law schools can, and do, create experiential offerings with differing educational benefits.⁸ Seven common variations and their implications are:

- **Grant Funded In-House Clinics.** Some departures from the intensively supervised, student-focused, in-house clinic model above are driven by the demands of external funders. External organizations such as the IRS, Area Agencies on Aging, Office of Violence Against Women (VAWA) typically fund law school clinics in order to address a need for services, not because they are devoted to legal education. Thus, grant renewal may be dependent on completing a high volume of cases. Such grant-funded offerings otherwise look like the traditional in-house clinic — located at the law school and taught by a full-time employee of the law school (whether faculty member, staff attorney, or faculty member). Because they focus heavily on client service, however, they may depart from the traditional in-house clinic model characterized by small caseloads and intensive supervision of students handling cases in the role of first chair.
- **Faculty Taught and Coordinated Clinics with Additional Supervision by Individual Volunteer Attorneys or Teams of Volunteers.** A model adopted by some clinics draws on either individual volunteers or teams of volunteer attorneys both to provide specialized substantive expertise that a single faculty member may lack, and to provide additional supervision resources. This variation has gained traction particularly in the transactional area where multiple, specialized subject matter expertise may be needed.⁹ In those offerings, the volunteer teams may be composed of specialists in areas such as

⁸ When the offering involves a cohort of students performing legal work in one location — whether at the law school or elsewhere — the offering is most often referred to as a clinic. But that label does not necessarily bring with it the intensive supervision that characterizes the dominant image of an in-house clinic described in the subsection on law clinics, *Delivering Effective Education in In-House Law Clinics*, Chapter 5, Section F, Subsection 2, above.

⁹ See, e.g., the University of Washington's Entrepreneurial Law Clinic, <http://www.law.washington.edu/Clinics/Entrepreneurial/Default.aspx>, archived at <http://perma.cc/4JAL-3ZZN>.

corporate, tax, or intellectual property, and work with student teams on discrete projects. A faculty member provides additional supervision and the “glue” to hold the effort together, and teaches the classroom sessions, perhaps with selected volunteer attorneys as guests. Such efforts are typically created primarily for educational purposes. With sufficient faculty resources to support the effort, this model may provide an intensively supervised educational experience for students similar to the more traditional in-house clinic.

- **Off-Site, Faculty-Taught and -Supervised Community Partnership Clinics.** Some experiential offerings — often termed “external clinics” — are created and operated primarily for educational purposes, using a model of intensive supervision by a full-time faculty member, but operate out of the offices of an external community partner. The educational benefit of such an experience to students will be indistinguishable from a traditional in-house clinic. For the law school, however, such a partnership has the benefit of providing a stream of cases for the clinic without the need to set up an entire law office. In some cases, the arrangement may also allow the faculty member to return unfinished cases to the community partner when the clinic term ends, thus, relieving the faculty member from case coverage duties when the clinic is not operating.¹⁰
- **Off-Site, Faculty-Taught, Practitioner-Supervised Community Partnership Clinics.** In another variation, the offering divides teaching between a full-time faculty member who teaches the classroom component and one or more practitioner supervisors.¹¹ The arrangement may be one in which the faculty member teaches a specialized class small enough that case supervision can be provided by one individual. Or the class may be general in nature, focused perhaps on “the lawyering process”¹² and large enough that students are placed with several different organizations. This “dual” supervision model, of course, is a defining characteristic of externships. But in this arrangement, the clinic label is often applied because the practitioner supervises a cohort of students, as in the traditional in-house clinic, and is significantly, perhaps exclusively, focused on the educational enterprise for the term of the clinic. Often the arrangement with the practitioner-supervisor(s) is one with a greater emphasis on student education and supervisor familiarity with clinical pedagogy than characterizes the prototypical externship. The offering may, therefore, provide the intensive supervision characteristic of the traditional in-house clinic, but without the ability to connect classroom, rounds, and supervision as seamlessly as happens in unitary supervision in in-house

¹⁰ In the Alliance Glossary, both these types of external clinics and in-house clinics are grouped together under the heading of “Law Clinics,” recognizing that the similarities in the student experience outweigh the structural difference.

¹¹ This arrangement is often termed a “hybrid” clinic, but that term is also sometimes used for other variations.

¹² The Lawyering Process clinic offered by clinical education pioneer Gary Bellow at Harvard followed this model, using as supervisors experienced attorneys earning LL.M. degrees — *i.e.*, “clinical fellows” in current terminology — who were placed with community organizations and supervised a cohort of students.

clinics, where the same faculty member is doing both the teaching and the supervision.

- **Practitioner-Supervised and -Taught Community Partnership Clinics.** In another variation, both the classroom teaching and the case supervision are handled by a practitioner. Depending on the law school's arrangement with the community partner, the focus may be primarily on education¹³ or primarily on service, and the practitioner may or may not have the time and support to focus significantly on supervision, and to develop expertise around clinical pedagogy.
- **Enhanced Externships.** In some externships, the faculty supervisor takes on a more intensive supervisory role than usual by consulting on some or all of the cases and attaching the externship to a higher-credit course, perhaps including a strong substantive focus. The result may be something half-way in between an externship and an in-house clinic, but without a cohort of students supervised by one external supervisor. A variety of local conditions may drive such arrangements.
- **Field Placements Incorporated into a Law School Course.**¹⁴ Field placements may be attached to an existing or newly developed law school course. The course may draw upon student experiences in the field to shed light on the subject matter or problems addressed in the course. The faculty member may arrange the placements, or function in the role of an externship faculty teacher.

Not exhaustive, this list nonetheless gives some flavor of the possibilities and the tradeoffs inherent in different structures.

e. Best Practices for Variations on Traditional In-House Clinic and Externship Models

Given the two general best practices for experiential course variations articulated above — ensure tuition value to students and fair law school contributions — the challenge then becomes to articulate additional, specific best practices for achieving the general best practices goals.

Ideally, before sponsoring an experiential offering, law schools engage in the following three specific best practices to ensure value to students and fair law school contributions:

- Consider what the proposed or potential structure(s) of the course will provide in the way of integration of doctrine, theory, skills, values, and legal ethics, instruction on conceptual frameworks, opportunities to practice skills

¹³ To ensure an education-focused effort, the law school and the organization often enter a Memorandum of Understanding or similar agreement that frees the supervisor of other duties and designates pedagogical goals for the clinic. The law school may designate the practitioner an adjunct faculty member and buy out some of her time, so she can focus on the students.

¹⁴ This model resonates with a well-developed undergraduate education approach known as service learning. Some law schools have developed such offerings under the terminology of “practicums” or “labs.”

and receive feedback, and occasions for self-evaluation and reflection.¹⁵

- Identify specific and achievable course learning objectives in light of the resources available to support the offering.
- Include as part of the law school's contribution to the offering, a plan for
 - providing professional development support and oversight to the teacher/supervisor, as needed; and
 - periodically reviewing the structure of the course and its educational benefits to ensure that students receive sufficient value.

Life is not ideal, however, and law schools often adopt variations on experiential education models based on opportunities rather than because they make considered decisions that a proposed structure will provide specific educational benefits. For instance, a faculty member wants help with an existing volunteer effort. Funding for a project unexpectedly becomes available from a grant source. A community organization suggests a partnership to address an unmet legal need. A lawyer in the community wants to work with students. In such cases, it is especially important for the law school to mentor and monitor — provide expertise as the project is developed and engage in ongoing assessment to ensure that the experiential offering is meeting student learning needs and goals.

f. Conclusion

As law schools pursue a variety of creative structures for experiential offerings involving real supervised practice, the key challenges will be to understand what value students receive and achieve sufficiently high quality education in each offering.

¹⁵ These are, of course, the criteria for courses that will satisfy the six semester-credit experiential course requirement under ABA Standard 303(a)(3).